Supreme Court, U.S.
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NO.

IN THE

Supreme Court Of The United States

VERNON MILLS, PRO SE,
Petitioner,

v.

LAW OFFICE OF MELBOURNE MILLS, JR
DAVID STUART, and
MICHAEL P. CASEY,
Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeals Of Kentucky

PETITION FOR WRIT OF CERTIORARI

Vernon Mills Pro Se
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QUESTIONS PRESENTED FOR REVIEW

I. Whether Kentucky state court and Kentucky court of Appeals Violates Substantial Due Process and is therefore Unconstitutional by failure to properly apply Kentucky Law?

II. Whether as applied under 12.02.(10) in this case of Legal Malpractice is Valid?

III. Whether as interpreted by the Kentucky Court Of Appeals under CR. 12.02. is really a conclusive presumption, and thus, Violates Due Process?

PARTIES TO THE PROCEEDING

Including the parties named in the caption of this Petition, the parties are:

Petitioner: Vernon Mills, ("Mr. Mills") an individual, Pro Se without any legal trainging.

Respondents: Attorney David Stuart, and Attorney Micheal P. Casey, Attorney's with The law office of Melburne Mills, Jr.

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STATEMENT OF THE BASIS FOR JURISDICTION

This is a dispuit over the meaning of the Seventh Amendment to the Constitution to the United States were the State Court dismissed the claim on a motion filed by the Defendants, the complaint was outside the one year statute of limitations, and the failure of the plaintiff to state a valid claim of legal negligence under Kentucky law, **The Kentucky Appeals Court adjudge that appellant's action was filed within the one-year statute of limitation,** neverless the Court of Appeals agreed that the complaint failed to state a cause of action. And affirm the dismissal of the complaint under CR 12.02., Kentucky CR. 12.02(10) says a complaint should not be dismissed for failure to state a claim unless it appears to a certainty that the claimant is entitled to no relief under any state of facts which could be proved in suport of the claim, this Court will see in this petition all of the case laws that the petitioner had is his case was denied his Due Process Rights, to a jury trial, to prove his case. The State Court and the Appeals Court's failure to apply the laws that has been entered into this case and into the motion to set aside order of dismissal, and the laws in the petition for rehearing, and the motion for Discretionary Review to the Supreme Court of Kentucky, which was Denied on April 15, 2004., The Petitioner claims on the grounds that were the State Court "Denied" his claim in the prior case on a motion for costs in the amount $13,829.22. proved the Respondent's public office were negligent in the perormance of ministerial duties by failing to cite a statute, or the case law that this Petitioner filed to the State Court, and that such negligence cause Petitioner injuries, of $13,829.22. just in that issue, and not counting the other act's of negligence that is evidence in the deposition's that the jury failed to get to hear, Proved the State Court in this case erred in dismissing the complaint for failure to state a cause of action, and by the

Appeals Court's failuer to reverse the appeal, and by the Kentucky Supreme Court Denying Discretionary Review, was in fact a Violation of the Seventh Amendment to the Constitution for a jury trial, and the due processs right's for a pro se litigant.

I. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

28 U.S.C 1257 states in pertinent part:

(a) Final judgments or decree rendered by the highest Court in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or were the validity of a statute of any state is drawn in question on the grounds of it being repugnant to the Constitution, treaties, or laws of the United States. . . .

RULE 38 JURY TRIAL OF RIGHT

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by statute of the United States shall be preserved to the parties inviolate.

RULE 38(b) DEMAND:

Any party make a jury demand. The demand then applies to all parties for the duration of the case.

This case involves a complaint of attorney malpractice in the handling of a personal injury action arising from a motor vehicle accident, were the two Respondent's, took deposition's of two expert's, Medical Doctor's and one failed to ask any questions about the injuries after the Doctor told the Respondent about the injurues after he had reviewed the MRI reports, And the other failed to let the jury here the facts were the other failed to ask any questions about the Whiplash injuries, and the other injuries of the T spine, and the L spine, that the Doctor, told

him about, and on the deposition he took of the Doctor, who did the MRI reports, failed to let the jury here the fact's were the Doctor stated that the injuries of the Cervical Spine at C-5-6, and Thoracic Spine at T 8-9, and The Lumbar Spine at L 3-4, and 4-5, When attorney Ronald E. Thornsberry, ask Dr. Seo, of the imaging studies you did on Mr. Mills, of the C spine, the L spine, and the T spine, you could not find anything in that, that you do not think pre-existed the automobile accident of November 25, 1994, is that correct, answer (correct). and the fact the Respondent, failed to show the Court the Law Langhehs v. Parmelee, Ky 427 S.W.2d 223 (1968), on the Bill of costs, and the validity of K.R.S.413.245.one year statute of limitations, and CR. 12.02(10). and

Kentucky CR. 12.02.(10). A complaint should not be dismissed for failure to state a claim unless it appears to a certainty that the claimant is entitled to no relief under any state of facts which could be proved in support of the claim, **Spencer v. Woods, 282 S.W.2d 851 (Ky.1955); Upchurch v. Clinton County, 330 S.W.2d 428 (Ky. 1959); Ingram v. Ingram, 283 S.W.2d 210 (Ky.1955). (On App, Petition For Rehearing at Page 1).** and

Langhehs v. Parmelee, Ky, 427 S.W. 2d 223 (1968). The law recognizes the right of a personal injury plaintiff to recover medical expenses recovery of such medical expenses and services are permitted to the extent that thay are calculated to have remedial for the injuries sustained in the accident, to be recoverable, a plaintiff must present adequate proff that the injuries was of a character reasonable calulated to be remedial for that services or expenese, such adequaat proff comes in the form of an expert from the medical profession. **(On Response to Defendant's Motion To Dismiss;Notice)(On App, at page 3, of Petition For Rehearing Opinion Affirmaing).** and

S.C.R. 3.130(1.1). A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation **(On App, Petition For Rehearing Opinion Affirmaing at page 3)**. and

Kentucky CR. 8.01(3). Sheare v. Hall, 399 S.W. 2d 701 (Ky.1966). Were a complaint alleged that defendant public office were negligent in the performance of ministerial duties and that such negligence cause plaintiff's injuries, the Court erred in dismissing the complaint for failure to state a cause of action. **(On App, Petition For Rehearing Opinion Affirmaing at page 1)**, and

Edge v. Hook, 303 S.W.2d 310 (Ky.1957). Were a complaint employs language tending to specify particular act of alleged negligence but may reasonably be taken as alleging in general that negligent conduct on the part of the defendant resulted in damage to the plaintiff, the complaint should not be dismissed unless there is no state of facts that could be proved in support of the claim of negligence. **(On App, Petition For Rehearing Opinion Affirming at page 2)**, and

Grisham v. Wal-Mart Stares, 929 Supp. 1054 (E.D.Ky. 1995), Affirmed 89 F. 3d 833 (6th Cir. 1996). To maintain a claim for negligence, the plaintiff must establish a duty on the part of the defendant, a breach of that duty, and a causal connection between the breach and an injury suffered by the plaintiff.

The two Respondent's in this case was hired by the petitioner to represent him in a personal injury action arising from a motor vehicle accident, And by the negligence of these two has been proveing by the law;s and by the facts in all of this action.

Attorney Micheal P. Casey, took the deposition of Dr. Talmadge v. Hays, on 7/18/97, the Doctor stated that he incurred a clasic whiplash injuries, to his neck, and sustained exacerbation or further injuries, to his lumbar spine, or segments there of, Attorney Micheal P. Casey, did **"NOT"** ask the Doctor any questions about a whiplash injuries, if they were permanent, or if it cause any pain or any thing. (**On complaint at page 3),**

The **Magnetic Resonance Imaging Report from the Southeastern Kentucky Dagnostic Center 12/12/94,** to the referring Dr. Talamadge v. Hays, taken by Dr. Tae-Seo, M.D. of the cervical spine, minimal bulging of the disc at the levels of C2-3, 4-5, and 5-6, and the Thoracic spine, focal sclerotic change is noted at T-8-9, and the Lumbar Spine, there is minimal degeneration of disc with desiccation at the level of L5-S1, and minimal bulging of the disc in lower lumber spine region at the level of L3-4, 4-5, and 5-S1. **(On, complaint at page 4-5),** and

By the gross neligence, of Attorney David Stuart, the jury did not get to here any of the pertinent facts, to prove that the wreck, caused Vernon Mills, a lot of injuries, and pain, and mential anguse, the above facts are in deposition and under oath.**(On complaint at page 7)**. and

When attorney David Stuart, file the bill of costs and motion for costs states as followes comes the plaintiff, by counsel, and submits herewith his bill of costs pursuant to **C.R. 54.04,** as well as his motion for costs, in addition to those allowed by **C.R. 54.04,** plaintiff respectfully moves for other costs, in the amount of **$13,829.22**, the plaintiff, gave to Mr. Stuart, all of the medical bills and medical expenses, that plaintiff, had paid for with his owen money, for the injuries, receved in the

11/25/94, wreck, and the attorney that the plaintiff hired to represent him allowed the court to believe that was a (pro se motion for the $13,829.22), he fail to show the court the law mintion below, **LANGHEHS V. PARMELEE, KY, 427 S.W.2d 223 (1968) such adequaate proff comes in the from of an expert from the medical profession,** the law recognizes the right of a personal injury plaintiff to recover medical expenses recovery of such medical expenses and services are permtted to the extent that they are calculated to have been remedial for the injuries sustained in the accident to be recoverable, a plaintiff must present adequate proff that the injuries was of a character reasonably calulated to be remedial for that service or expenese. (plaintiff gave the proff to Attorney David Stuart, **(On complaint at page 7and 8),** and attached to the complaint is the M.R.I. Reports, and

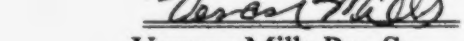
The jurisdiction of the United States Supreme Court does not depend on whether the state court addressed the federal question. It is enough that the federal claim was made and not accepted. (Lynk v. La Porte Superior Court No. 2, 789 F.2d 554 (7th Cir. 1986). Furthermore, when the Kentucky Supreme Court denies a Petition for Review, it is to be assumed that the court has been given fair opportunity to review the merits of the petitioner's claim, for purposes of exhaustion of state court remedies.

CONCLUSION

This case presents serious due process issues concerning ststutes invoked in thousands of cases annually in Kentucky, in pro se litigants action. Petitioner resprctfully requests this court grant Certiorari to review the issues.

For the reasons outlined above the petitioner, Vernon Mills, requests that the Petition for Writ of Certiorari be granted.

Respectfully Submitted



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APPENDIX

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COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
SIXTH DIVISION
CIVIL BRANCH
95-CI-3545

VERNON MILLS PLAINTIFF

AND

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
INTERVENING PLAINTIFF

V. **OPINION AND ORDER**

JANET S. WILSON DEFENDANT

AND

HARTFORD UNDER WRITERS INSURANCE CO.
INTERVENING DEFENDANT

* * * * * * * * * * *

This mater is before the Court on the Plaintiff's Motion for Costs in the amount of $406.95. The Defendant raises no objection to this Motion. **The Plaintiff has also filed what is, in fact, a pro se Motion for Costs in the amount of $13,829.22.** The Defendant dose object to this Motion. The Court being sufficiently advised, it is hereby ORDERED that the Plaintiff;s Motion for Costs in the amount of $13,829.22. is DENIED, as there is no basis in law for the requested award.

"s/ LEWIS G. PAISLEY, JUDGE"
ENTERED March 20, 2000. FAYETTE CIRCUIT COURT

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO.01-CI-1052

VERNON MILLS PLAINTIFF

VS. **ORDER OF DISMISSAL**

LAW OFFICE OF MELBOURNE MILLS, JR. DEFENDANT
DAVID STUART and
MICHEAL P.CASEY

*** *** ***

This matter having come before the Court on the Motion to Dismiss filed by counsel for the Defendants, the Court having conducted a hearing or having heard the arugments of counsel on Friday, April 20, 2001 and the Court being otherwise sufficiently advised;

It is HEREBY ORDER AND THEREFORE ADJUDGED that the Motion to Dismiss filed by the Defendants shall be SUSTAINED and that for the reasons set forth in the Motion to Dismiss including, but not limited to the arguments on the one year statute of limitations and the failure of the plaintiff to state a valid claim of legal negligence under Kentucky Law, the Court does now ORDER the above styled action is to be DISMISSED with Prejudice.

This Order of Dismissal with Prejudice is a final and appealable order which resolves all claims and there is no just cause for delay.

"s/Gary D. Payne"
Judge Fayette Circuit Court

To be entered this the 21 day of April, 2001.

b

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 01-CI-1052

VERNON MILLS PLAINTIFF

VS. **ORDER OVERRULING MOTION TO SET ASIDE ORDER OF DISMISSAL**

LAW OFFICE OF MELBOURNE MILLS, JR. DEFENDANT
DAVID STUART and
MICHEAL P.CASEY

This matter having come before the Court upon a Motion filed by the Plaintiff to set aside Order of Dismissal, the Defendant having filed another Response and the Court having previously overruled from the Bench the Motion to set Aside the Order of Dismissal filed on or about May 8, 2001, and the Court having heard the augments and being otherwise sufficiently advised;

IT IS HEREBY ORDERED that the Motion to Set Aside the Order of Dismissal and to be Heard Ex-parte filed by the Plaintiff on or about October 17, 2001, is now OVERRULED.

This is a final and appealable Order.

To be entered this 29 day of Oct 2001.

/s/ Gary D. Payne
Judge, Fayette Circuit Court

c

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 32001-CA-002420-MR

VERNON MILLS PLAINTIFF

V. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 01-CI-01052

LAW OFFICE OF MELBOURNE MILLS, JR.
DAVID STUART; and MICHEAL P.CASEY, DEFENDANT

OPINION
AFFIRMING

* * * * * * * * * *

BEFORE: BAKER, GUIDUGLI, and SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order dismissing appealant's legal malpractice action for being filed outside the statute of limitations and for failure to state a claim. Although we adjudge that appellant's action was filed within the one-year statute of limitations, we neverless agree that the complaint failed to state a cause of action. Hence, we affirm the dismissal of the claim under CR 12.02.

Rendered: March 21, 2003;

/s/ JUDGE'S ALL CONCUR

d

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO.2001CA-002420-MR

VERNON MILLS PLAINTIFF

V.

APPEAL FROM FAYETTE CIRCUIT COURT
ACTION NO. 00-CI-01052

LAW OFFICE OF MELBOURNE MILLS, JR;
DAVID STUART MICHEAL P. CASEY DEFENDANT

ORDER
DENYING PETITION FOR REHEARING

* * * * ** * * * * * *

BEFORE: BACKER, GUIDUGIL, and SAHRODER, JUDGES.

This court having considered the petition for Rehearing and being sufficiently advised, it is ORDER that the same is hereby DENIED.

ENTERED: APR 20, 2003

/s/ JUDGE, COURT OF SPPEALS

e

SUPREME COURT OF KENTUCKY
2003-SC-0361-D
(2001-CA-2420)

VERNON MILLS — MOVANT

V.

FAYETTE CIRCUIT COURT
NO. 2001-CI-1052

DAVID STUART and
MICHEAL P. CASEY — RESPONDENTS

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED April 15, 2004.

/s/ Joseph E. Lambert
CHIEF JUSTICE, SUPREME COURT

f